

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JORGE GALEAS-MENCHU, EL, JR.,)
)
 Petitioner,)
)
 v.) 1:22CV497
)
STATE OF NORTH CAROLINA,)
)
 Respondent.)

ORDER

This matter is before this court for review of the Order and Recommendation filed on July 5, 2022, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 2.) In the Recommendation, the Magistrate Judge recommends that this action be construed as a habeas petition under 28 U.S.C. § 2254 and dismissed *sua sponte* without prejudice to Petitioner filing a new petition which corrects the defects of the current Petition. The Recommendation was served on the parties to this action on July 5, 2022. (Doc. 3.) Petitioner submitted various post-Recommendation filings, including three Notices and one Affidavit (Docs. 4-7).

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject,

or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the Recommendation as well as Petitioner's post-recommendation filings, and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 2), is **ADOPTED. IT IS FURTHER ORDERED** that this action be construed as a habeas petition under 28 U.S.C. § 2254 and **DISMISSED** *sua sponte* without prejudice to Petitioner filing a new petition which corrects the defects of the current Petition. The new petition must be accompanied by either the five dollar filing fee or a current application to proceed in forma pauperis. Finding neither a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability is **DENIED**.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 21st day of September, 2022.

William L. Osburn, Jr.
United States District Judge